IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

MONDAY, THE 10TH DECEMBER 2007 / 19TH AGRAHAYANA 1929

WP(C).No. 31327 of 2005(D)

PETITIONER:

K.SANTHAMMA, NEEDLE WORK AND GARMENTS MAKING CRAFT TEACHER, CHIDAMBARANATH U.P.SCHOOL, RAMANTHALI, PAYYANNUR.

BY ADV. SRI.P.SIVARAJ

RESPONDENTS:

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1. THE STATE OF KERALA, REPRESENTED BY THE SECRETARY TO GOVERNMENT, EDUCATION DEPARTMENT, THIRUVANANTHAPURAM.

2. THE DIRECTOR OF PUBLIC INSTRUCTIONS, THIRUVANANTHAPURAM.

3. THE DEPUTY DIRECTOR OF EDUCATION, KANNUR.

4. THE ASSISTANT EDUCATIONAL OFFICER, PAYYANNUR.

5. THE HEADMASTER, CHIDAMBARANATH U.P. SCHOOL, RAMANTHALI, PAYYANNUR.

BY SR. GOVERNMENT PLEADER SRI.R.LAKSHMI NARAYAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 10/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX (WPC 31327/2005)

PETITIONER'S EXTS.

EXT.P1 - TRUE COPY OF CERTIFICATE ISSUED BY THE HEADMASTER, CHIDAMBARANATH U.P.SCHOOL, RAMANTHALI, DATED 27.11.2001.

EXT.P2 - TRUE COPY OF THE ORDER NO.B5-6200/99/K.DIS DATED 1.6.1999 ISSUED BY THE DEPUTY DIRECTOR (EDUCATION), KANNUR.

EXT.P3 - TRUE COPY OF JUDGMENT DATED 5.1.1999 IN O.P.NO.3825/1993-E OF THIS HONOURABLE COURT.

EXT.P4 - TRUE COPY OF THE JUDGMENT DATED 20.12.2004 OF THIS HONOURABLE COURT IN O.P.NO.39188/2001.

EXT.P5 TRUE COPY OF THE COVERING LETTER SENT ALONG WITH THE CERTIFIED COPY OF EXT.P4 JUDGMENT TO THE DEPUTY DIRECTOR OF EDUCATION, KANNUR, THE 3RD RESPONDENT.

EXT.P6 – TRUE COPY OF THE ORDER DATED 10.02.2005 OF THE 3RD RESPONDENT.

EXT.P7 - TRUE COPY OF THE CERTIFICATE DATED 17.3.1993 ISSUED BY THE HEADMASTER OF THE CHIDAMBARANATH U.P. SCHOOL, RAMANTHALI.

EXT.P8 - TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDENT DATED 28.3.2005.

EXT.P9 - A TRUE COPY OF THE ORDER DATED 2.7.2005 ISSUED BY THE 1ST RESPONDENT.

EXT.P10 - TRUE COPY OF THE G.O DATED 30.11.2000 ISSUED BY THE 1ST RESPONDENT.

EXT.P11 - TRUE COPY OF G.O.(RT) NO.753/2001/G.EDN. DATED 23.2.2001 ISSUED BY THE 1ST RESPONDENT.

RESPONDENTS' EXTS. NIL.

/TRUE COPY/

K.BALAKRISHNAN NAIR, J.

W.P.(C) NO. 31327 OF 2005-D

JUDGMENT

The petitioner was appointed as a Part-time Craft Teacher in the retirement vacancy of a Full-time Craft Teacher in Chidambaranath U.P. School, Ramanthali, Payyannur by the Manager on 2.6.1980. The said appointment was duly approved. Later, the Assistant Educational Officer converted the said post as a Full-time post with effect from 15.7.1982. While so, the Accountant General objected to the said conversion by communication dated 23.3.1985. Thereupon, the A.E.O., Payyannur, the 4th respondent herein cancelled the said conversion and ordered the petitioner to refund the excess salary received by her from 15.7.1982. The said order was challenged before this Court by filing O.P.No.6865/1986. This Court quashed the said order by judgment dated 8.11.1990, holding that the A.E.O has no power to revise his own orders. Later, the Deputy Director of Education, Kannur, the 3rd respondent herein cancelled the conversion of the Part-time post into Full-time post, by order dated 11.2.1993 and the petitioner was directed to refund the excess salary of Rs.6,856/- received by her for the period from 15.7.1982 to 31.5.1985. The said order was also

challenged before this Court. By Ext.P3 judgment dated 5.1.1999 this Court directed the 3rd respondent Deputy Director to reconsider the matter. The petitioner was granted the benefit of conversion based on two orders dated 19.5.1971 and 25.10.1971. This Court found that those orders were not applicable to the petitioner, who was appointed only in 1980. The said orders were meant for the teachers who were in service as on 31.3.1971. By Ext.P3 judgment, this Court specifically directed the Deputy Director to consider the following three aspects: (1) Whether the petitioner could have continued in the Full-time post. (2) Whether the number of periods warrant creation of a Full-time post, and (3) Whether she had, in fact,worked in the Full-time post.

2. Pursuant to the said direction, the Deputy Director again passed an order, which was challenged before this Court in O.P.No.39188/2001. This Court by Ext.P4 judgment dated 20.12.2004, quashed the said order. The 3rd respondent was directed to pass revised orders, answering question Nos.2 and 3 afresh, mentioned above. The said respondent reconsidered the matter and issued Ext.P6 order. He answered all the questions in the negative. It was found that between 1982 and 2005, the periods for craft varied between 10 and 12. The effective students strength varied from 164 to 272. Since the effective students strength was below 500 and the periods

for craft were below 15, it was found that the petitioner could not have worked in a Full-time post and a Full-time post could not have been sanctioned. It was also found that the petitioner had worked only in the Part-time post and if she had worked in the Full-time post, it was at her own risk and against the orders of the competent authority. The petitioner moved the Government by filing Ext.P8 representation, challenging Ext.P6. The Government after considering the arguments of the petitioner, dismissed the said representation by Ext.P9 order, affirming the findings of the Deputy Director. It was also held that in the past certain bad precedents were created by sanctioning Full-time posts without sufficient number of students or periods. The same cannot be repeated in the case of the petitioner, it was held. This Writ Petition was filed, challenging Exts.P6 and P9. Even now the petitioner contends that the decisions rendered by the authorities below are not strictly in conformity with Exts.P3 and P4 judgments. Therefore, they are liable to be set aside. In the case of similarly placed teachers in other schools, Full-time posts have been sanctioned irrespective of the periods available and the same treatment should have been meted out to her. The petitioner cites two specific cases of Smt.A.V.Leela and Smt.P.Bharathi.

3. The respondents have filed a counter affidavit, supporting the

impugned orders. According to them, in the absence of sufficient students strength and periods, the post of Full-time Craft Teacher cannot be sanctioned.

4. Going by the facts disclosed in Ext.P6, which gives the number of students and the number of periods available as per the provisions of the K.E.R., the petitioner's post could not have been converted as a Full-time post. There is no scope for creating a Full-time post of Craft Teacher in her school. In view of the above position, the criticism of the petitioner that the impugned orders were not passed in accordance with the judgments of this Court, cannot be accepted. This Court directed reconsideration, to arrive at the correct factual position. Now, from the details disclosed, it is clear that the Rules do not permit sanctioning of a Full-time post of Craft Teacher in the petitioner's school. Therefore, the contention of the petitioner cannot be accepted.

5. The next point raised by the petitioner is based on the treatment meted out to similarly placed Teachers by the Government. The Government might have granted the benefits to certain persons illegally. But, the same cannot be the foundation for claiming the benefits by others. The Apex Court has repeatedly held that for satisfying the requirement of Article 14 of the Constitution of India, the Government cannot be

compelled to repeat an illegality or irregularity. In view of the above position, no relief could be granted to the petitioner. Accordingly, the writ petition fails and it is dismissed.

10th December, 2007. **K.BALAKRISHNAN NAIR, JUDGE**.

Nm/